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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

ELECTRONIC FRONTIER FOUNDATION, )  
Plaintiff, )  
v. )  
OFFICE OF THE DIRECTOR OF NATIONAL )  
INTELLIGENCE, )  
Defendant. )  
)  
)  
)

NO. 07-CV-05278-SI

**SUPPLEMENTAL DECLARATION OF  
KURT OPSAHL IN SUPPORT OF  
MOTION FOR AWARD OF  
ATTORNEY'S FEES AND COSTS**

Date: May 23, 2008  
Time: 9:00 a.m.  
Courtroom: 10, 19th Floor

1. I am an attorney of record for the plaintiff in this matter and a member in good standing of the California State Bar, and am admitted to practice before this Court. I have personal knowledge of the matters stated in this declaration. If called upon to do so, I am competent to testify to all matters set forth herein.

1       2. I am a Senior Staff Attorney at Plaintiff Electronic Frontier Foundation ("EFF"),  
2 which is a nonprofit corporation established under the laws of California with its principal place of  
3 business in San Francisco.

4       3. I am familiar with the prevailing hourly rates in the San Francisco Bay Area for  
5 lawyers of comparable education, expertise, and experience. As part of the process of setting rates  
6 for EFF attorneys, I have researched and reviewed the hourly rates for lawyers of comparable  
7 education, expertise, and experience at other law firms.

8       4. From 1999 to 2004, I worked as an attorney with Perkins Coie LLP in the Bay Area,  
9 and am familiar with Perkins Coie's rates. If I had remained at Perkins Coie, my 2008 hourly rate  
10 would likely be around \$550 - \$570.

11       5. When EFF revised its hourly rates for 2008, the change reflected the fact that its  
12 rates had remained the same for 2005, 2006, and 2007. My 2008 rate reflects an approximately  
13 7.3% average annual increase from my 2005 rate, and brought my rate in line with the currently  
14 prevailing hourly rates.

15       6. In *Apple v. Does* (Santa Clara Superior Ct., Case No. 1-04-CV-032178), EFF was  
16 paid my attorney's fees at my 2007 rate pursuant to a court order, despite vigorous opposition by  
17 Apple. In that case, the legal standard was whether the fee was at the prevailing billing rates of  
18 comparable private attorneys. In *In re Sony BMG CD Technologies Litigation*, (S.D.N.Y. Case No  
19 1:05-cv-09575-NRB), EFF was paid my attorney's fees at this rate as part of the settlement of the  
20 action in June 2006. While the amount of attorney's fees for the class counsel was stipulated, a  
21 court order approved the stipulation. (Dkt. No. 127). In *OPG v. Diebold*, 337 F. Supp. 2d 1195  
22 (N.D. Cal. 2004), EFF was paid its attorney's fees pursuant to a settlement.  
23

24       7. After a careful review of our files on the case, I have estimated the minimum  
25 number of hours I spent on the reply and this declaration as follows:  
26

<u>Date</u>	<u>Task</u>	<u>Hours</u>
5/3/08	Review and analysis of ODNI opposition brief; Legal research on entitlement and eligibility for fees.	1.40
5/6/08	Legal research on entitlement to fees in response to arguments raised in ODNI opposition; Research prevailing rates.	1.80
	Draft section of reply brief regarding entitlement.	2.50
5/7/08	Review and revise reply brief section.	1.30
5/8/08	Review and revise reply brief; analysis of applicable precedent.	1.10
	Research prevailing rates.	0.40
	Draft declaration in support of reply brief.	0.60
	=====	====
	Total reply hours:	9.10

8. In total, I spent no fewer than 9.1 hours on the reply brief and this declaration. At my 2008 hourly rates, my fees for this work are \$4,777.50.

9. In total, I have spent no fewer than 22.1 hours on this litigation, with 12.25 hours spent in 2007 when my hourly rate was \$425 per hour (\$5,206.25) and 9.85 hours spent in 2008 when my hourly rate was \$525 per hour (\$5,171.25). At my hourly rates during the relevant timeframe, my total fees are \$10,377.50.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct to the best of my knowledge and belief. Executed May 9, 2008 in San Francisco, California.

/s/ *Kurt Opsahl*  
Kurt Opsahl